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JUN 13 1942
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IN THE

# Supreme Court of the United States

## No. 148

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties,
Petitioners,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
RUSSELL M. HAYHURST, GEORGE KOENIG and JAMES DUVALL,
for Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in its Yard in Evansville, Indiana,

A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen,
Respondents.

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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Evansville, Indiana,
June 15th, 1942.

U. S. Law Printing Co., Phone Lakeview 6581, Chicago, Illinois

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IN THE

# Supreme Court of the United States

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**CARLOS J. MILLER,**
**CHARLES MORTON,**
**HOMER SHELTON,**

**For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties,**

**Petitioners,**

**vs.**

**THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,**
**RUSSELL M. HAYHURST, GEORGE KOENIG and JAMES DUVALL,**

**for Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in its Yard in Evansville, Indiana,**

**A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen,**

**Respondents.**

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

*To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States of America:*

The petitioners respectfully show:

### Summary and Short Statement of Matter Involved.

This is an action for an injunction, originally instituted and tried in the Superior Court of Vanderburgh County,

Indiana. The petitioners herein were the plaintiffs in the trial court, and by their complaint (Rec. pp. 1 to 9) alleged, and upon trial supported said allegations by proof (Rec. pp. 28 to 55) that they were employed by the Louisville and Nashville Railroad Company as switchmen and yardmen under a written collective labor agreement, through which they held certain seniority rights, together with the exclusive right to perform all switching and yard services in the yards of said Railroad in Evansville, Indiana (Rec. pp. 140; 47). That they were members of the Brotherhood of Railroad Trainmen, and as such were entitled to certain rights, contractual in nature, afforded them by the Constitution and By-Laws (Rec. pp. 29 to 35) of that organization. Upon August 1st, 1935, the Chicago and Eastern Illinois Railway Company closed its station in the City of Evansville, and thereafter availed themselves of the use of the Louisville and Nashville Railroad Company's station and yards in the City of Evansville for the arrival and departure of certain trains theretofore using only the Chicago and Eastern Illinois Railway Company's station (Rec. p. 45). The evidence discloses that prior to August 1st, 1935, the Chicago and Eastern Illinois Railway Company, the New York Central Railroad Company, and the Illinois Central Railroad Company all used the yards and depot of the Louisville and Nashville Railroad Company with reference to other trains, and upon these trains the Louisville and Nashville Railroad Company yardmen, the petitioners herein, had performed all switching and yard operations (Rec. p. 40). Following the closing of the Chicago and Eastern Illinois Railway Company's Station, their switchmen and yardmen, the respondents herein, who were also members of the Brotherhood of Railroad Trainmen, asserted a right to follow their switching and yard services into the Louisville and Nashville Railroad Company's yards (Rec. p. 41). The peti-

tioners would not accede to this request, and the relationship of these two groups of workmen being contractual in character by virtue of their membership in the same labor organization, this dispute was referred to the regularly constituted agencies and tribunals of that organization for determination and settlement. The local chairmen were called in, and being unable to agree, the President of the Brotherhood, A. F. Whitney, assigned Vice-President Zanger to investigate the dispute, and report, which he did, recommending that the claim of the Chicago and Eastern Illinois men be upheld. This recommendation was adopted by the President (Rec. p. 63) (Defendants' Exhibit 1) and the Louisville and Nashville men, following the fixed course of procedure set up by the Constitution of this organization, perfected an appeal from said ruling to the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63) (Defendants' Exhibit 1). The Constitution of the Brotherhood of Railroad Trainmen provided that "Such decision (of the Board of Appeals) shall be the final adjudication of any and all rights and questions included in the appeal." (Rec. p. 31) (Plaintiffs' Exhibit 1). After a full hearing in which all parties participated, this tribunal of this organization entered its ruling, supporting the position of the Louisville and Nashville yardmen, and reversing the ruling of President Whitney (Rec. p. 63) (Defendants' Exhibit 1). This was upon May 5th, 1938. This decision, finally adjudicating this controversy, was thereafter acquiesced in by all concerned, including the respondents herein, until May and June, 1939 (Rec. p. 63) (Defendants' Exhibit 1) when a convention of this organization passed an *ultra vires* and void resolution, reversing the decision of the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63) (Defendants' Exhibit 1). However, nothing fur-

ther was done until the summer and fall of 1940, when an effort was made to bring the Chicago and Eastern Illinois yardmen into the Louisville and Nashville yards to displace Louisville and Nashville yardmen (Rec. pp. 74 to 85) and this action for an injunction to prevent the respondents from interfering with the petitioners' right to seniority, to the exclusive right to work in the Louisville and Nashville yards, and to secure to the petitioners the benefits of their favorable final decision of the Board of Appeals of the Brotherhood of Railroad Trainmen was instituted (Rec. p. 1). The trial court at the conclusion of the case entered a permanent injunction in favor of the petitioners, granting them the relief set out above (Rec. pp. 25 to 27) and respondents thereafter appealed to the Supreme Court of Indiana. By a written opinion, said Court reversed the lower court, holding that the lower court was without power to interfere with the internal affairs of a labor organization by granting the injunction entered, and remanded the cause for a new trial (Rec. pp. 98 to 103) (38 N. E. 2nd, 239). A petition for rehearing was duly filed (Rec. p. 103) and upon the 21st day of January, 1942, the petition for rehearing of the petitioners was by the Supreme Court of Indiana denied (Rec. p. 104).

**Statement of Jurisdiction.**

The Supreme Court of the United States has jurisdiction to review the decision of the Supreme Court of Indiana in this cause on a Writ of Certiorari in that the Supreme Court of Indiana has decided a federal question of substance not theretofore determined by the Supreme Court of the United States, and has decided it in a way not in in accord with the applicable decisions of the Supreme Court of the United States.

That said substantial federal question is: That the Supreme Court of Indiana by its decision and opinion denies

to the petitioners the rights secured them by the Fourteenth Amendment of the Constitution of the United States, and particularly Section 1 of the same, which is in the words and figures as follows, to-wit:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
>
> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That said decision and holding (Rec. pp. 98 to 103) deprives the petitioners of property without due process of law as follows, to-wit: The record reveals that under the pleadings and the controlling facts in this case, which are not in dispute, the petitioners had a right of action for injunction. That the Supreme Court of Indiana by its decision and holding denies to the petitioners that right of action and denies to the petitioners a remedy in said cause of action, and denies to the petitioners a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction in the State of Indiana.

That said federal question is substantial for the reason that it affects the rights of hundreds of thousands of workmen in the United States, who are individual members of labor unions or like organizations, in that it denies them a remedy in a court of competent jurisdiction for the protection of their individual rights against the arbitrary, dictatorial and *ultra vires* acts of such unions or organizations, and denies them a judicial determination of a cause of action involving such rights.

That said federal question was raised by the petitioners herein by their petition for rehearing filed in the Supreme Court of Indiana upon the 13th day of January, 1942 (Rec. pp. 103 to 104), and denied upon the 21st day of January, 1942 (Rec. p. 104).

That said federal question was raised for the first time upon petition for rehearing in the Supreme Court of Indiana for the reason that the decision of the Supreme Court of Indiana supplied a new and unexpected basis for a claim by the petitioners of the denial of a federal right. The denial by the Supreme Court of Indiana of petitioners' right of action for injunction, the denial of the petitioners' right to a remedy in said cause of action, and the denial to the petitioners of a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction of the State of Indiana was not within the issues and questions presented by the pleadings in said cause of action, namely the complaint (Rec. pp. 1 to 9) and by the answer of the respondents thereto (Rec. pp. 12 to 23), or the reply of the petitioners thereto (Rec. pp. 22 to 23). That said pleadings reveal that the issue of the right of the trial court to judicially determine the controversy, and to give petitioners a remedy in said cause of action was not raised by the pleadings, nor was the issue of the trial court's right to judicially determine the cause of action raised in the trial court, and neither was said issue raised in the Supreme Court of Indiana, nor was such issue presented to that court for determination. And the respondents as appellants had not theretofore in the Supreme Court of Indiana urged or contended that the courts of Indiana were without jurisdiction or right to determine judicially petitioners' right of action for injunction. The opinon of the Supreme Court

in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) sets out the contention of both the petitioners as appellees, and respondents as appellants in this cause of action, and in this cause prior to the opinion of the Supreme Court of Indiana, it had not been contended or urged that the courts of Indiana were without power or right to judicially determine the controversy between the petitioners and the respondents, and to construe the Constitution of the Brotherhood of Railroad Trainmen, to determine the rights of the respective parties hereto under such Constitution, which was a contract between these parties.

**Questions Presented.**

The question presented in this petition is whether the Supreme Court of Indiana can deny to these petitioners the right to redress, protection and remedy in a court of competent jurisdiction against the threatened invasion and violation of their rights. This petition questions the right of the Supreme Court of Indiana to forbid a judicial determination of petitioners' rights, which is the effect of the law of this case established by the opinion of said court, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) by which said court reversed the lower court in this cause. As a corollary to the fundamental question of this petition is the proposition that the action of the Supreme Court of Indiana should be reversed, and the action of the lower court affirmed, so that the law of this case be properly established, that petitioners be granted their right to a remedy and to a judicial determination of the issues of their cause of action, and further that the action of the lower court in entering a permanent injunction against the respondents be in all things affirmed.

For a determination of the above questions, this petition makes it necessary that this court determine the right of

workmen employed by a railroad company under a collective labor agreement, by which they hold seniority, the right to work and the right to work under certain favorable working conditions, to seek an injunction in a proper court, to protect them and others similarly situated against the menacing encroachment upon their said rights by trainmen and yardmen of another railroad. The determination of the above questions further involves a determination of the rights afforded petitioners by virtue of their membership in the Brotherhood of Railroad Trainmen, and their relationship with the respondents, also members of the same organization. By their said membership in said organization, both the petitioners and the respondents contracted to be bound by a system of arbitration of disputes such as arose between the petitioners and respondents over the closing of the Chicago and Eastern Illinois station in Evansville, Indiana, which said system of arbitration was fixed and determined by the Constitution of that organization. Here these petitioners had submitted this dispute for determination and arbitration to the duly constituted tribunal of the Brotherhood of Railroad Trainmen created by its Constitution and after a hearing, participated in by all concerned, including respondents, a decision, final in character was entered by the Board of Appeals of the Brotherhood of Railroad Trainmen in favor of the petitioners (Rec. pp. 63 to 71). This petition presents the right of these petitioners to have a judicial determination of their right to the benefits of that favorable decision of the Board of Appeals of the Brotherhood of Railroad Trainmen, and further, that a judicial determination and remedy upon the basis of the undisputed facts of this cause of action should be in favor of petitioners, and hence this Court should affirm the action of the trial court.

**Proceedings in Trial Court.**

This action was commenced by the filing of a complaint in one paragraph by the petitioners against the respondents (Rec. pp. 1 to 9). There was an answer by the Louisville and Nashville Railroad Company (Rec. pp. 12, 13). There was an answer in three paragraphs by the other respondents (Rec. pp. 13 to 22) to which petitioners addressed a reply (Rec. pp. 22, 23). The cause was dismissed as to Benjamin Wham, Trustee of the Chicago and Eastern Illinois Railway Company, and the Chicago and Eastern Railway Company (Rec. p. 11). Upon the issues thus formed, the cause was submitted for trial and resulted in the trial court entering a permanent injunction as prayed by the petitioners against the respondents, restraining the respondents from interfering with petitioners' right to seniority, and the right to work in the Evansville yards of the Louisville and Nashville Railroad Company (Rec. pp. 15 to 27). A motion for new trial was filed and denied. An appeal was prayed and perfected to the Supreme Court of Indiana (Rec. pp. 24 to 27).

**The Decision of the Supreme Court of Indiana.**

The decision of the Supreme Court of Indiana in this cause is set out in the record, pages 98 to 103, and is reported in 38 N. E. 2nd, at page 239. The opinion of said court states the facts as presented to the court below, and to said Supreme Court of Indiana, as follows:

> "This is a controversy between members of the Brotherhood of Railroad Trainmen. The railroad companies have no interest in the result. The appellees began the action on behalf of themselves and all other switchmen and yardmen employed by the Louisville and Nashville Railroad Company in Vanderburgh County, Indiana. The purpose of the suit is to prevent the employment of certain members of the

brotherhood in the switching yards operated by the Louisville and Nashville Railroad Company in Vanderburgh County. There was a permanent injunction in favor of the plaintiffs. * * *

"The controlling facts are not in dispute. Both railroad companies have contracts with the Brotherhood of Railroad Trainmen providing for seniority rights for employees. By the terms of this agreement, members of the brotherhood employed by the Louisville and Nashville Railroad Company were entitled to seniority rights in the Louisville and Nashville Railroad Company yards, and members of the brotherhood employed by the Chicago and Eastern Illinois Railway Company were entitled to seniority rights in the yards of that company. Both railroad companies operate trains into the City of Evansville. Prior to 1935 both railroad companies maintained depots. Some of the Chicago and Eastern Illinois Railway Company trains ended their run at Evansville and returned north, while others were through trains which continued south from Evansville on the Louisville and Nashville Railroad. Prior to 1935, the Chicago and Eastern Illinois switching of these trains was conducted in its own yards. In 1935 the Chicago and Eastern Illinois Railway Company depot was closed and all the trains were run into the Louisville and Nashville Railroad Company depot, and all train switching was thereafter done in the Louisville and Nashville Railroad Company switching yards.

"The Louisville and Nashville yardmen claimed the privilege of doing all of the switching in the Louisville and Nashville yards by reason of their claim of exclusive seniority privileges under the brotherhood contract with the railroad company. The Chicago and Eastern Illinois yardmen claimed the right to do a certain part of the switching upon the theory that there had been a "merger" within the meaning of article "G" of the Declaration of Policy of the Brotherhood of Railroad Trainmen, and that their seniority rights were protected, and that they were entitled to

participate in the switching of the merged operation. This controversy was submitted to the general chairman of the brotherhood for each railroad system, who were unable to agree, and the matter was, under the rules of the brotherhood, referred to the president of the brotherhood, who sustained the contention of the Chicago and Eastern Illinois yardmen. Thereupon the Louisville and Nashville yardmen appealed from the decision of the president to the board of appeals of the brotherhood. The board of appeals reversed the decision of the president, sustaining the contention of the Louisville and Nashville yardmen. At the next meeting of the grand lodge, the supreme power in the brotherhood, the decision of the board of appeals was reversed, and a decision made in favor of the Chicago and Eastern Illinois yardmen."

The Court states the issues presented to the trial court and to the Supreme Court of Indiana as follows:

"The case as presented to the court below and to this court depends for its solution entirely upon an interpretation and construction of the constitution and laws of the union respecting the jurisdiction of various union agencies to decide the questions presented by the controversy and the finality of these decisions. It is contended by the appellants that the controversy submitted to the president of the brotherhood required nothing more than an interpretation of the laws of the brotherhood; that the sole power to interpret the laws is vested in the president, subject only to an appeal to the board of directors and then to the grand lodge, and that therefore the board of appeals, to which an appeal was taken from the president's order, had no power or jurisdiction to intervene. The appellees contend that the controversy involved a question of fact to be decided by the president; that the appeal from his decision was therefore properly taken to the board of appeals; that by the provisions of the constitution of the brotherhood, the decision of the

board of appeals is final. But the appellants contend that, even though the appeal was properly taken to the board of appeals, section 6 of the constitution of the brotherhood provides: 'The Grand Lodge has exclusive jurisdiction over all subjects pertaining to the Brotherhood, and its enactments and decisions upon all questions are the supreme law of the Brotherhood. The Grand Lodge may hear and determine all matters of controversy which may be brought before it by appeal or otherwise. * * *' The appellees contend that this provision is nullified, in so far as controversies are concerned, by the constitutional provisions later adopted providing for decisions by the board of appeals, and that they shall be final."

Upon the foregoing statement of facts and the statement of issues presented to the trial court and the Supreme Court of Indiana, the latter court erroneously reversed the lower court with instructions to sustain a motion for new trial. In so doing, said court in its said opinion, by establishing the law of this cause of action, precludes the petitioners from seeking relief in the courts of Indiana for the threatened invasion and encroachment upon their rights, namely, the right to seniority and work, and their right to the benefit of the favorable final decision of the Board of Appeals of the Brotherhood of Railroad Trainmen. The Supreme Court of Indiana by its said opinion holds erroneously that the questions presented involve an interpretation and construction of the constitution and by-laws of the Brotherhood of Railroad Trainmen, and that the courts will not review the correctness of the interpretation placed upon the constitution by its duly authorized tribunals. The effect of this opinion is to deny to the petitioners a remedy in a court of competent jurisdiction, and therefore the Supreme Court of Indiana has

denied to the petitioners due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States. That said federal question was directly presented to the Supreme Court of Indiana upon petition for a rehearing as herein stated, and was denied.

**Reasons Relied Upon for the Allowance of Writ.**

A substantial federal question of great importance, not only to the petitioners herein, but to every individual member of a labor organization in the United States, is presented by this petition. This petition directly presents the right of an individual member of a labor organization to seek redress or remedy in a proper court for the threatened and actual invasion of his individual rights as a workman to seniority, to the right to work, to the right to the benefits secured by him by his union membership by the constitution and by-laws of such organization against the arbitrary, dictatorial and *ultra vires* acts of the organization itself. The Writ of Certiorari herein prayed for should be granted petitioners for the reason that they have been denied due process of law in contravention of the Fourteenth Amendment of the Constitution of the United States in that the Supreme Court of Indiana has denied them a judicial determination of their cause of action and has precluded them from having such a judicial determination of their cause of action.

Wherefore, the petitioners herein respectfully pray that a Writ of Certiorari may issue out of and under the seal of this Court, directed to the Supreme Court of the State

of Indiana, to the end that the judgment of the Supreme Court of Indiana may be reviewed and reversed by this honorable Court.

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by said Railroad Company in the Same Capacity as the Named Parties,
*Petitioners,*

By THEODORE LOCKYEAR,
ELMER Q. LOCKYEAR,
CHARLES J. EICHEL,
*Attorneys for Petitioners.*

Dated at Evansville, Indiana,
June 15th, 1942.

# PETITIONER'S

# BRIEF

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA.

THEODORE LOCKYEAR,
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*Attorneys for Petitioners.*

Evansville, Indiana,
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U. S. Law Printing Company, 2817 N. Halsted St., Chicago, Ill.

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Petitioners,

vs.

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for Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in its Yard in Evansville, Indiana,

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Respondents.

---

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA.

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### 1.

### The Opinion.

The petitioners herein by a petition for a writ of certiorari, seek a review of a judgment and opinion of the Supreme Court of the State of Indiana in this cause. The

opinion of the Supreme Court of Indiana will be officially reported in the Indiana Reports, and said opinion has been reported in 38 N. E. 2nd, 239, and the same is set out in the printed record, pages 98 to 103.

2.

**Statement of the Grounds Upon Which the Jurisdiction of the Supreme Court of the United States Is Invoked.**

Jurisdiction in this cause is invoked under Section 237 of the Judicial Code of the United States as amended, Federal Code Annotated, Title 28, Section 344 (b), which provides:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by appeal, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question * * * any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, * * * and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. * * *"

Specifically, petitioners contend that by the judgment and opinion of the Supreme Court of Indiana in this cause, they have been denied due process of law as guaranteed by Section 1 of the Fourteenth Amendment of the Constitution of the United States, which is in the words and figures as follows, towit:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That said Federal question was raised in the first instance in the Supreme Court of Indiana by a petition for rehearing (Rec. pp. 103, 104) filed in said cause upon the 13th day of January, 1942, and denied by said court upon the 21st day of January, 1942. That said petition sought a rehearing in said cause from an adverse judgment and opinion of said court of December 29th, 1941 (Rec. pp. 98 to 103) (38 N. E. 2nd, 239). That said petition for rehearing raised said Federal question in the following manner:

"That said decision and holding deprives the Appellees of property without due process of law as follows, towit: The record reveals that under the pleadings and the controlling facts in this case, which are not in dispute, the Appellees had a right of action for injunction. That this Court by its decision and holding denies the Appellees that right of action, and denies to the Appellees a remedy in said cause of action, and denies to the Appellees a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction of the State of Indiana.

"Wherefore, Appellees pray the Court to grant a rehearing herein." (Petition for rehearing, Rec. pp. 103, 104).

That said Supreme Court of Indiana denied said petition for a rehearing by said order of January 21st, 1942, which is as follows:

"Come now the parties by counsel and the court, being advised in the premises, denies the appellees' petition for a rehearing heretofore filed herein.

"(Signed) Curtis G. Shake, Chief Justice." (Rec. p. 104).

That said decision and holding (Rec. pp. 98 to 103) (38 N. E. 2nd, 239) deprives the petitioners of property without due process of law as follows, towit: The entire record reveals that under the pleadings and controlling facts of this case, which are not in dispute, the petitioners had a right of action for injunction. That the Supreme Court of Indiana by its decision and holding denies to the petitioners any remedy in said cause of action, and denies to the petitioners a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction in the State of Indiana.

The Federal question herein involved is substantial for the reason that it affects the rights of hundreds of thousands of workmen in the United States who are individual members of labor unions or like organizations, in that it denies them individually a remedy in a court of competent jurisdiction for the protection of their individual rights against the arbitrary, dictatorial and *ultra vires* acts of such unions, officials, or organizations, and denies a judicial determination or a remedy in a cause of action involving such rights.

That said Federal question was first raised upon petition for a rehearing in the Supreme Court of Indiana upon the 13th day of January, 1942 (Rec. pp. 103, 104) for the reason that the decision of the Supreme Court of Indiana in this cause (Rec. pp. 98 to 103) (38 N. E. 2nd, 239) supplied a new and unexpected basis for a claim by the petitioners of a denial of a federal right. The denial by the Supreme Court of Indiana of petitioners' right of action for injunction, the denial of the petitioners' right to a

remedy in said cause of action, and the denial to the petitioners of a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction of the State of Indiana was not within the issues and questions presented by the pleadings in said cause of action, namely the complaint (Rec. pp. 1 to 9) and by the answer of the respondents thereto (Rec. pp. 12 to 23), or the reply of the petitioners thereto (Rec. pp. 22 to 23). That said pleadings reveal that the issue of the right of the trial court to judicially determine the controversy, and to give petitioners a remedy in said cause of action was not raised by the pleadings, nor was the issue of the trial court's right to judicially determine the cause of action raised in the trial court, and neither was said issue raised in the Supreme Court of Indiana, nor was such issue presented to that court for determination. And the respondents as appellants had not theretofore in the Supreme Court of Indiana urged or contended that the courts of Indiana were without jurisdiction or right to determine judicially petitioners' right of action for injunction. The opinion of the Supreme Court in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) sets out the contention of both the petitioners as appellees, and respondents as appellants in this cause of action, and in this cause prior to the opinion of the Supreme Court of Indiana, it had not been contended or urged that the courts of Indiana were without power or right to judicially determine the controversy between the petitioners and the respondents, and to construe the Constitution of the Brotherhood of Railroad Trainmen, to determine the rights of the respective parties hereto under such Constitution, which was a contract between these parties.

As stated above, the judgment and opinion of the Supreme Court of Indiana in this cause supplied a new and

unexpected basis for a claim by petitioners of the denial of a Federal right, and thereupon said Federal question was directly raised by the petition for rehearing (Rec. pp. 103, 104) and directly passed upon by said court (Rec. p. 104), and therefore said Federal question was raised at such a time and in such a manner as to confer jurisdiction upon this Court upon this petition for writ of certiorari. As sustaining the jurisdiction of this Court under the circumstances above disclosed, the following cases are in point:

*Great Northern R. Co.* v. *Sunburst Oil & Ref. Co.,* 287 U. S. 358; 77 L. Ed. 360; 53 S. Ct. 145; 85 A. L. R. 254.

*Saunders* v. *Shaw,* 244 U. S. 317; 61 L. Ed. 1163; 37 S. Ct. 638.

*Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill,* 281 U. S. 673; 74 L. Ed. 1107; 50 S. Ct. 451.

*Herndon* v. *Georgia,* 295 U. S. 441; 79 L. Ed. 1530; 55 S. Ct. 794. Rehearing denied in 296 U. S. 661; 80 L. Ed. 471; 56 S. Ct. 82.

The petition for writ of certiorari herein, with the within supporting brief, together with the transcript and the printed record were duly filed with the Clerk of the Supreme Court of the United States upon the 15th day of June, 1942, the Supreme Court of the United States having theretofore by its order of the 13th day of April, 1942, extended the time for the filing of said petition to the 21st day of May, 1942 (Rec. p. 105), and having by an order of the 11th day of May, 1942, further extended said time to and including the 20th day of June, 1942 (Rec. p. 105).

## 3.

## Statement of the Case.

This is an action for an injunction, originally instituted and tried in the Superior Court of Vanderburgh County, Indiana. The petitioners herein were the plaintiffs in the trial court, and by their complaint (Rec. pp. 1 to 9) alleged, and upon trial supported said allegations by proof (Rec. pp. 28 to 55) that they were employed by the Louisville and Nashville Railroad Company as switchmen and yardmen under a written collective labor agreement, through which they held certain seniority rights, together with the exclusive right to perform all switching and yard services in the yards of said Railroad in Evansville, Indiana (Rec. pp. 140, 47). That they were members of the Brotherhood of Railroad Trainmen, and as such were entitled to certain rights, contractual in nature, afforded them by the Constitution and By-Laws (Rec. pp. 29 to 35) of that organization. Upon August 1st, 1935, the Chicago and Eastern Illinois Railway Company closed its station in the City of Evansville, and thereafter availed themselves of the use of the Louisville and Nashville Railroad Company's station and yards in the City of Evansville for the arrival and departure of certain trains theretofore using only the Chicago and Eastern Illinois Railway Company's station (Rec. p. 45). The evidence discloses that prior to August 1st, 1935, the Chicago and Eastern Illinois Railway Company, the New York Central Railroad Company, and the Illinois Central Railroad Company all used the yards and depot of the Louisville and Nashville Railroad Company with reference to other trains, and upon these trains the Louisville and Nashville Railroad Company yardmen, the petitioners herein, had performed all switching and yard operations (Rec. p. 40). Following the closing of the Chicago and Eastern Illinois Railway Com-

pany's Station, their switchmen and yardmen, the respondents herein, who were also members of the Brotherhood of Railroad Trainmen, asserted a right to follow their switching and yard services into the Louisville and Nashville Railroad Company's yards (Rec. p. 41). The petitioners would not accede to this request, and the relationship of these two groups of workmen being contractual in character by virtue of their membership in the same labor organization, this dispute was referred to the regularly constituted agencies and tribunals of that organization for determination and settlement. The local chairmen were called in, and being unable to agree, the President of the Brotherhood, A. F. Whitney, assigned Vice-President Zanger to investigate the dispute, and report, which he did, recommending that the claim of the Chicago and Eastern Illinois men be upheld. This recommendation was adopted by the President (Rec. p. 63) (Defendants' Exhibit 1) and the Louisville and Nashville men, following the fixed course of procedure set up by the Constitution of this organization, perfected an appeal from said ruling to the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63 (Defendants' Exhibit 1). The Constitution of the Brotherhood of Railroad Trainmen provided that "Such decision (of the Board of Appeals) shall be the final adjudication of any and all rights and questions included in the appeal." (Rec. p. 31) (Plaintiffs' Exhibit 1). After a full hearing in which all parties participated, this tribunal of this organization entered its ruling, supporting the position of the Louisville and Nashville yardmen, and reversing the ruling of President Whitney (Rec. p. 63) (Defendants' Exhibit 1). This was upon May 5th, 1938. This decision, finally adjudicating this controversy, was thereafter acquiesced in by all concerned, including the respondents herein, until May and June, 1939 (Rec. p. 63) (Defendants' Exhibit 1) when a convention of this organ-

ization passed an *ultra vires* and void resolution, reversing the decision of the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63) (Defendants' Exhibit 1). However, nothing further was done until the summer and fall of 1940, when an effort was made to bring the Chicago and Eastern Illinois yardmen into the Louisville and Nashville yards to displace Louisville and Nashville yardmen (Rec. pp. 74 to 85) and this action for an injunction to prevent the respondents from interfering with the petitioners' right to seniority, to the exclusive right to work in the Lousiville and Nashville yards, and to secure to the petitioners the benefits of their favorable final decision of the Board of Appeals of the Brotherhood of Railroad Trainmen was instituted (Rec. p. 1). The trial court at the conclusion of the case entered a permanent injunction in favor of the petitioners, granting them the relief set out above (Rec. pp. 25 to 27) and respondents thereafter appealed to the Supreme Court of Indiana. By a written opinion, said Court reversed the lower court, holding that the lower court was without power to interfere with the internal affairs of a labor organization by granting the injunction entered, and remanded the cause for a new trial (Rec. pp. 98 to 103) (38 N. E. 2nd, 239). A petition for rehearing was duly filed (Rec. p. 103) and upon the 21st day of January, 1942, the petition for rehearing of the petitioners was by the Supreme Court of Indiana denied (Rec. p. 104).

## 4.

## Specification of Errors Intended to Be Urged.

The question presented in this petition is whether the Supreme Court of Indiana can deny to these petitioners the right to redress, protection and remedy in a court of competent jurisdiction against the threatened invasion and violation of their rights. This petition questions the

right of the Supreme Court of Indiana to forbid a judicial determination of petitioners' rights, which is the effect of the law of this case established by the opinion of said court, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) by which said court reversed the lower court in this cause. As a corollary to the fundamental question of this petition is the proposition that the action of the Supreme Court of Indiana should be reversed, and the action of the lower court affirmed, so that the law of this case be properly established, that petitioners be granted their right to a remedy and to a judicial determination of the issues of their cause of action, and further that the action of the lower court in entering a permanent injunction against the respondents be in all things affirmed.

For a determination of the above question, this petition makes it necessary that this court determine the right of workmen employed by a railroad company under a collective labor agreement, by which they hold seniority, the right to work and the right to work under certain favorable working conditions, to seek an injunction in a proper court, to protect them and others similarly situated against the menacing encroachment upon their said rights by trainmen and yardmen of another railroad. The determination of the above questions further involves a determination of the rights afforded petitioners by virtue of their membership in the Brotherhood of Railroad Trainmen, and their relationship with the respondents, also members of the same organization. By their said membership in said organization, both the petitioners and the respondents contracted to be bound by a system of arbitration of disputes such as arose between the petitioners and respondents over the closing of the Chicago and Eastern Illinois station in Evansville, Indiana, which said system of arbitration was fixed and determined by the Constitution of that organization. Here these petitioners had submitted

this dispute for determination and arbitration to the duly constituted tribunal of the Brotherhood of Railroad Trainmen created by its Constitution and after a hearing, participated in by all concerned, including respondents, a decision, final in character was entered by the Board of Appeals of the Brotherhood of Railroad Trainmen in favor of the petitioners (Rec. pp. 63 to 71). This petition presents the right of these petitioners to have a judicial determination of their right to the benefits of that favorable decision of the Board of Appeals of the Brotherhood of Railroad Trainmen, and further, that a judicial determination and remedy upon the basis of the undisputed facts of this cause of action should be in favor of petitioners, and hence this Court should affirm the action of the trial court.

## ARGUMENT.

### Summary of Argument.

**Point A. The Supreme Court of the United States has jurisdiction to pass upon the Federal question presented by the petition for writ of certiorari herein.**

**Point B. The constitutional guarantee to due process of law includes the right of petitioners to a judicial determination of their right of action, their right to a remedy.**

**Point C. The petitioners in this cause have involved such vested property rights as will justify the interference of a court of equity for their protection by injunction against the wrongful invasion thereof by respondents.**

**Point D. The petitioners had a cause of action requiring a judicial determination.**

**Point E. The opinion and judgment of the Supreme Court of Indiana in this cause denies petitioners due process of law.**

### Point A.

The Federal question raised in this cause of action was raised in the Supreme Court of Indiana in sufficient time and in such a manner as to make the facts and circumstances of this case within the recognized exception to the rule that the Federal question must be distinctly raised and ruled upon in the state court, and that presentation of such question upon petition for rehearing is too late. Here the opinion and judgment of the Supreme Court of Indiana supplied a new and unexpected ground for the claim of a denial of a Federal constitutional right. It had not been anticipated that the right to due process of law

would be denied to the petitioners. This places the instant case within the exception laid down by Judge Cardozo in the case of *Great Northern R. Co.* v. *Sunburst Oil & Ref. Co.*, 287 U. S. 358; 77 L. Ed. 360; 53 S. Ct. 145; 85 A. L. R. 254, wherein he said:

> "The rule, general as it is, does not extend to cases where the constitutional question, however tardily raised, is considered and decided * * * nor does it apply where the grounds of the decision supply a new and unexpected basis for a claim by the defeated party of the denial of a Federal right."

To the same effect is the case of *Herndon* v. *The State of Georgia*, 295 U. S. 441; 79 L. Ed. 1530; 55 S. Ct. 794; Rehearing denied in 296 U. S. 661; 80 L. Ed. 471; 56 S. Ct. 82:

> "There is no doubt that the Federal claim was timely if the ruling of the state court could not have been anticipated and a petition for rehearing presented the first opportunity for raising it."

Judge Brandeis in *Brinkerhoff-Faris Trust and Sav. Co.* v. *Hill*, 281 U. S. 673; 74 L. Ed. 1107; 50 S. Ct. 451, stated:

> "The additional Federal claim thus made was timely since it was raised at the first opportunity."

A further statement of this rule is contained in the case of *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U. S. 313; 74 L. Ed. 870; 50 S. Ct. 326, wherein the following appears:

> "It is well settled that this Court will not consider questions that were not properly presented for decision in the highest court of the State. Ordinarily it will not consider contentions first made in a petition to the state court for a rehearing, where the petition is denied without more * * * but here the company at the first opportunity invoked the protection of the Federal Constitution and statute. It could not earlier have

> availed the section as violative of the Constitution and laws of the United States. * * * Upon the facts disclosed by this record, it is clear that the appellant sufficiently raised in the highest court of the state the Federal questions here presented, and is entitled to have them considered."

From the facts stated herein in the Statement of Jurisdiction, it clearly appears that the Federal question presented by the petition for rehearing was ruled upon in substance. The denial of the Federal right claimed clearly appears from the opinion. This is a question of fact to be determined from the record. The inquiry necessary for the Supreme Court of the United States to make is as stated in the case of *Norris* v. *The State of Alabama,* 294 U. S. 587; 79 L. Ed. 1074; 55 S. Ct. 579:

> "When a Federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms, but also whether it was denied in substance and effect."

A reference to the opinion of the Supreme Court of Indiana in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) reveals that this cause was decided by said court in a manner and upon grounds not contended for by either of the parties, as will herein be shown. That said decision and judgment of said court denied to these petitioners due process of law, guaranteed to them by the Constitution of the United States. The petitioners timely and distinctly raised said Federal question by their petition for rehearing. The presentation of said Federal question being the sole ground upon which rehearing was prayed by the petitioners, the denial of said petition by the Supreme Court of Indiana constituted a distinct ruling upon said Federal question.

**Point B.**

By the opinion and judgment of the Supreme Court of Indiana in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) the Supreme Court of Indiana held and established as the law of this case that this being a controversy between members of the same labor organization, namely, the Brotherhood of Railroad Trainmen, and the questions presented involved the interpretation of the jurisdiction of various boards, tribunals and bodies of that organization, the courts of Indiana were powerless to interfere in the internal affairs of said labor organization, and therefore denied specifically to these petitioners a remedy in their said cause of action; denied to the petitioners a judicial determination of their cause of action. The effect of said judgment and opinion of the Supreme Court of Indiana is that petitioners have no right to seek redress in a court of the State of Indiana for the protection of their rights. This is a denial to the petitioners of due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The denial of due process of law as guaranteed by the constitutional provisions referred to can arise from judicial action, as well as from legislative enactment. Where one has a cause of action entitling him to a remedy, the denial of that remedy constitutes a denial of due process of law. In this position the petitioners find support in the decided cases. The rule upon which petitioners rely is aptly stated in the case of *Brinkerhoff-Faris Trust and Sav. Co.* v. *Hill*, 281 U. S. 673; 74 L. Ed. 1107; 50 S. Ct. 451, wherein this Court speaking through Mr. Justice Brandeis stated:

> "But while it is for the state courts to determine the adjective as well as the substantive law of the state, they must in so doing accord the parties due

process of law. *Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy unless there is or was afforded to him some real opportunity to protect it.*"

Upon this issue we are not confronted with a question involving "procedural due process." Nor is an issue involved presenting the right of a legislative branch of government to substitute or change a remedy. We are confronted with a situation in which the Supreme Court of Indiana, by denying to petitioners any remedy in their cause of action, takes away the cause of action.

16 Corpus Juris Secundum, page 1241, section 616 states:

> "Due process of law requires a judicial determination of the issues."

Section 611 of the same work, at page 1221 states:

> "The Constitutional guarantees of due process of law do not require that parties shall be entitled to any particular form of action or any particular method of procedure for the protection of rights or redress of wrongs. *These guarantees do require, however, that the substance of property rights be preserved, that the courts accord to the parties due process in determining adjective and substantive law, and that some adequate and appropriate remedy be afforded for the vindication of personal and property rights.*"

Volume 12, American Jurisprudence, section 665, page 352 is as follows:

> "Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to

> protect it. A law which operates in effect to make remediless injury to an employer's business by striking employees and others, through concerted action in picketing, displaying banners * * * deprives the owner of the business and the premises of his property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution."

In section 583 at page 282 of the same work, it is said: "It is not within the power of the state to take away all remedy for the enforcement of a right."

This rule is perhaps best stated in the language of the dissenting opinion of Mr. Justice Bradley in the case of *Campbell* v. *Holt,* 115 U. S. 620; 29 L. Ed. 483, 488, which statement has been generally accepted by the courts of last resort of this country as a proper statement of the law:

> "Remedies are the life of rights, and are equally protected by the Constitution. Deprivation of a remedy is equivalent to a deprivation of the right which it is intended to vindicate, unless another remedy exists or is substituted for that which is taken away. This court has frequently held that to deprive a man of a remedy for enforcing a contract is itself a mode impairing the validity of the contract. And, as before said, the right of defense is just as valuable as the right of action. It is the defendant's remedy. There is really no difference between the one right and the other in this respect."

In the case of *Chicago M. & St. P. Ry. Co.* v. *Minnesota ex rel Railroad and Warehouse Commission,* 134 U. S. 418; 33 L. Ed. 970; 10 S. Ct. 462, the following appears in the opinion of the court:

> "In other words, although the railroad company is forbidden to establish rates that are not equal and reasonable, there is no power in the courts to stay the

> hands of the commission, if it chooses to establish rates that are unequal and unreasonable. This being the construction of the statute by which we are bound in considering the present case, we are of opinion that, so construed, it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its rights to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

In the case of *Otis Elevator Co.* v. *Industrial Commission, et al,* 302 Ill. 90; 134 N. E. 19, the court said:

> "Due process of law requires submission to a judicial tribunal for determination upon its own independent judgment as to both law and facts according to the settled rules governing judicial action and decisions." Citing *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287; 64 L. Ed. 908; 40 S. Ct. 527.

The attention of the Court is also directed to the case of *Cantor, et al* v. *Sachs, et al* (Del.) 162 Atl. 73, 80:

> "It is to be remembered that questions of due process are raisable not alone with respect to allegedly invalid legislative enactments; they may likewise be directed against the course and manner of conducting judicial proceedings."

The petitioners upon the basis of the foregoing, take the position that where one has a cause of action, he must have a remedy. That therefore the denial of a remedy would amount to a deprivation of the right of action and would amount to a denial of due process of law.

**Point C.**

The petitioners herein have involved in this cause of action certain rights, which are the petitioners' right to work, to earn wages, to seniority, to work under favorable and preferential conditions, all secured to the petitioners as members of the Brotherhood of Railroad Trainmen by their collective labor agreement with the Louisville and Nashville Railroad Company, and petitioners' right to the protection afforded them by virtue of the contractual obligation of each member of the Brotherhood of Railroad Trainmen to each other member by virtue of the Constitution of said organization. These were such vested property rights as a court of equity should and would protect and were such rights as justified the trial court in invoking its injunctive powers.

In one sense, every right is vested. If a man has a right at all, it must be vested in him. Otherwise, how could it be a right? When a contract is made, a right is vested in each party to have it remain unaltered; to have it performed.

By the judgment and opinion of the Supreme Court of Indiana in this cause, the petitioners have been deprived of a valuable property right, being deprived of their said cause of action.

That petitioners' rights were such as would justify the interference of a court of equity and their protection by injunction against the wrongful invasion thereof by respondents, is fully supported by the law of Indiana. In the case of *Abdon* v. *Wallace*, (1933) 95 Ind. App. 604; 165 N. E. 68, (Petition to transfer to the Supreme Court of Indiana denied) the law is stated as follows:

"Locomotive engineers who are members of the brotherhood are unfriendly toward engineers who are not members thereof, and are particularly so toward persons whom they regard as expelled or suspended members. Organized labor generally is opposed to the employment of engineers who are not members of the brotherhood. It is more difficult for non-member engineers than for members to obtain and remain in employment and to protect their interests, * * * as appears by the foregoing finding, appellees and Stone conspired with each other, on behalf of themselves and the other members of Division 546, and of the brotherhood to drive appellant and appellants in companion cases out of the brotherhood, and to cause them to lose their membership therein, and to deprive them of their rights and benefits in violation of the laws of the brotherhood, and that such acts by which they undertook to accomplish their purpose were void. * * * Such suspension being void, as found by the court, appellant and those associated with him, were not thereafter required to seek relief within the brotherhood, but were entitled at once to resort directly to the courts. * * * It appears by the findings that appellant and those associated with him had valuable rights, that those rights, pursuant to the conspiracy on the part of appellees, were being interfered with, and that appellees, as officers of the local division and as representatives of the brotherhood, were interfering with these valuable rights of appellant and others. *The acts of appellees being unlawful and void, courts of equity will interfere for the protection of such rights as appellant possessed.* In 5 C. J., page 1358, the rule that a court of equity will reinstate a member, where the association, in suspending or expelling him, acted unfairly, or in bad faith, or *beyond its powers*, and not in accordance with its laws or the laws of the land, such relief being granted by way of a decree annulling the wrongful suspension or expulsion, adjudging the member to be entitled to the rights and privileges of membership, and directing his restoration or reinstatement, or enjoining the association from depriving him of such rights or privileges, or interfering therewith."

That seniority is a valuable property right which will justify the interference of a court of equity for the protection of the same is supported by numerous cases. A leading case is that of *Piercy* v. *L. & N. R. Co.*, (1923) 198 Ky. 477; 248 S. W. 1042; 33 A. L. R. 322:

> "The primary purpose in the organization of labor unions and kindred organizations is to protect their individual members, and to secure for them a fair and just remuneration for their labor and favorable conditions under which to perform it. Their agreements with employers look always to the securing of some right or privilege for their individual members, and the right or privilege so secured by agreement is the individual right of the individual members, and such organization can no more, by its arbitrary act, deprive that individual member of his right so secured, than can any other person. The organization is not the agent of the member for the purpose of waiving any personal right he may have, but is only his representative for the limited purpose of securing for him, together with all other members, fair and just wages and good working conditions. * * * If the right of seniority may be changed or waived or otherwise dispensed with by the act of a bare majority of an organization, of which the one entitled thereto is a member, it would be builded upon a flimsy foundation of sand, which might slip from under him at any time by the arbitrary action of the members, possibly to serve their own selfish ends in displacing him.
>
> "But it is insisted by appellants that, inasmuch as Stanfill, when he became a member of the organization, stated that he would abide by its by-laws, rules and regulations, and the constitution, statutes, and orders of the grand division of the order, and cheerfully comply with the will of the lawfully constituted majority he should have submitted to the action of the order, and that he had in fact submitted to the order this controversy between him and his fellow members.

"In the first place Stanfill protested at all times and at all stages of the controversy in the organization against this action, upon the ground that it interfered with his right of seniority, and, in the next place, his agreement did not contemplate the submission by him to that body, of the determination of any question involving his personal rights. Doubtless, under the terms of his agreement as a loyal member, it was his duty to acquiesce in the will of a majority inside the order upon any question of policy or any difference of opinion that might have arisen affecting the welfare of the organization. But here we have a personal right acquired by him as against the railroad company under contract, and we have the order of Railroad Conductors asserting the right to waive for him the benefits of that contract. It could not have been in contemplation by a member of such organization that he agreed when he entered to submit to the order for decision a controversy involving his rights as against a third party."

Another leading case is that of *Schlesinger* v. *Quinto*, (1922), 194 N. Y. S. 401, affirming 192 N. Y. S. 564:

"The instant case does not arise out of a contract for individual employment. Two organizations, one composed of employers and the other of employees, have entered into an agreement. Each had power through the consent of its members to enter into a binding obligation in their behalf. By the constitution or by-laws of each, power is given to the organization to enforce, through disciplinary proceedings which have been demonstrated to be effective, compliance with the terms and conditions to which it has subscribed. This contract has mutual obligations binding on the parties thereto. Each party knows the obligation that it has assumed and the consequences of failure or refusal to perform those requirements. Through its control of its members it can compel performance. Under such circumstances, a decree of a court of equity can be enforced against either party

and in favor of the other. * * * An organization having such power to require performance by individual members can, through its officers, be compelled to exercise that power. There is in this contract mutuality of obligation, and there is also a mutuality of remedy for its enforcement."

In the case of *Donovan, et al* v. *Travers, et al,* (1934) (Mass.) 188 N. E. 705, it is said:

"* * * a right of seniority such as is here asserted is undoubtedly a *valuable property;* it arises only from agreement."

An Ohio case to the same point, is *Leveranz* v. *Cleveland Home Brewing Co.,* 24 Ohio N. P. N. S. 193:

"As long as such a contract continues in force, it ought to be the duty of a court of equity to enjoin any conspiracy on the part of either side to breach it, and the aid of the courts ought to be extended as freely to the employees as to the employers. * * * If a court of equity cannot enjoin an attempted breach of such a contract, then the system of collective bargaining may well be abandoned, and such advantages as come to both the employer and employee by reason of such system will be lost, as the legal remedy is wholly inadequate. The expense of obtaining it would render it valueless."

In an annotation in 95 A. L. R., page 48 (1935) the annotator makes the following comment:

"In *Stone Cleaning & Pointing Union* v. *Russell,* (1902) 38 Misc. 513, 77 N. Y. S. 1049, where the services involved were neither unique nor extraordinary, being of a uniform and established character, it was held that an injunction would not issue to restrain an employer's breach of contract with a union to employ none but its members for certain work. But this is not the general rule, for it now seems established that the remedy by injunction allowed to an employer is reciprocal."

Another Kentucky case in point is the case of *Gregg* v. *Starks*, 224 S. W. 459:

> "The very fact that the contract itself provides rights of seniority where the pay is the same is evidence that such rights were considered by the contracting parties as of sufficient value to demand protection. * * * Even conceding that the freight service is as remunerative as the passenger, it certainly must be apparent to any one that to be relegated to freight service after 20 years of passenger service would inflict irreparable injury if done in violation of a contract right, and that such injury could not be estimated in damages. Recognizing fully the general rules under which injunction is denied to enforce a contract for personal services or where the applicant has an adequate remedy at law, or where he will not suffer irreparable injury, we are nevertheless clearly of the opinion that none of these authorities are applicable here, and that the facts of this case are so extraordinary as to require injunctive relief if plaintiff is to have any protection whatever in his contract rights"

The following appeared in the case of *Harper* v. *Local Union, I. Union I. B. of E. W.*, (Tex) 48 S. W. 2nd, 1033:

> "We think it clear that appellees have no adequate remedy at law. As we have seen, there were no specific contracts of employment; and no criterion of practical application for ascertaining the damages that would flow from breach of the collective agreement is suggested. If injunction will not lie, the agreement, in so far as it is to the advantage of appellees, is unenforceable, and might as well be classed as merely a moral obligation or 'gentleman's agreement' ".

Judge Rosenman, in *Farulla* v. *Ralph A. Freundlich, Inc.*, 274 N. Y. S. 70, said:

> "The courts of this state have consistently enjoined threatened breaches of collective industrial agreements."

In the case of *Weber* v. *Nasser*, Cal. App., 286 P. 1074; superseded in 292 P. 637 on ground that sole question involved had become moot, the court said:

> "Courts should, in the interest of public welfare, give recognition to the laudable efforts of groups to improve industrial conditions and prevent waste and violence, and where the parties have contracted with that end in view, their contracts should be enforced in a manner to give them effect if possible."

Other cases supporting this position are *Suttin* v. *Union Button Works, Inc.*, 258 N. Y. S. 863; *Ribner* v. *Racso Butter & Egg Co.*, 238 N. Y. S. 132; *Goldman* v. *Cohen*, 227 N. Y. S. 311; *Order of Ry. Conductors* v. *Jones*, (Colo.) 239 P. 882.

**Point D.**

Under the facts of this case as disclosed by the Statement of the Case herein, petitioners said vested property rights were threatened with wrongful invasion upon the part of the respondents. The petitioners being members along with certain of the respondents, of the Brotherhood of Railroad Trainmen, were entitled to all the benefits secured them by the constitution of that organization, and were bound by its terms. This same statement applies to the respondents. When the Chicago and Eastern Illinois depot was closed in Evansville, Indiana, in 1935, the petitioners and respondents sought to settle differences arising betwen them as to the right of Chicago and Eastern Illinois yardmen to follow certain work into the Louisville and Nashville yards. The petitioners and respondents sought to settle this controversy by the submission of the same to the duly constituted tribunals of the Brotherhood of Railroad Trainmen set up to arbitrate such controversies by the constitution of the Brotherhood. Finally, the controversy was submitted to the Board of Appeals of the Broth-

erhood of Railroad Trainmen for decision. In a hearing participated in by both petitioners and respondents, and in which proceeding the respondents, as well as the petitioners invoked the jurisdiction of said tribunal, the position of the petitioners was sustained by a written decision. The same appears in the printed record at pages 70 to 71. By the constitution of the Brotherhood of Railroad Trainmen it is provided: "Such decision (of the Board of Appeals) shall be the final adjudication of any and all rights and questions included in the appeal." (Rec. P. 31, section 15(b) of the constitution of the Brotherhood of Railroad Trainmen). It has been the contention of the petitioners throughout this cause of action that this decision of the Board of Appeals constitutes a final adjudication of the controversy between the petitioners and the respondents. The petitioners have a substantive right or a vested property right in the benefits of said decision and judgment of the Board of Appeals, which they have a right to enforce by resort to the courts of Indiana. The record discloses that at a later date after this decision had been acquiesced in for more than a year, an attempt was made in a quadriennal convention of the Brotherhood of Railroad Trainmen at Cleveland, Ohio, to reverse this decision of the Board of Appeals (Rec. P. 72). The record is silent as to any provision of the constitution of the Brotherhood of Railroad Trainmen, giving any convention the right to reverse the Board of Appeals of that organization, which constitution makes the Board of Appeals' decisions final, nor is there any evidence in the record indicating that the constitution had been amended. Manifestly, the action of the Cleveland convention in 1939, attempting to override the decision of the Board of Appeals, was void as an *ultra vires* act of that body. The Supreme Court of Indiana does not hold that it was a valid act upon the part of that convention, nor does the Supreme Court of Indiana hold

that the decisions of the Board of Appeals of the Brotherhood of Railroad Trainmen are not final in character. The petitioners had the right to seek the aid of a court of equity in Indiana to protect them against the threatened invasion of their rights in violation of their favorable decision at the hands of the Board of Appeals of the Brotherhood of Railroad Trainmen.

In this connection, the petitioners desire to call the Court's attention to the case of *Robinson* v. *Dahm*, 159 N. Y. S. 1053, in which the court said:

> "Granted that a right of plaintiff has been violated, is he entitled to equitable relief? If such relief is denied, plaintiff, in case he is discharged under such circumstances that his rightful priority position would have protected him, may sue for damages for the breach of contract in discharging him. But the possible future wrong is not the true basis of this action; plaintiff is not suing to restrain the commission of a threatened wrong. On the contrary, his action is based on a wrong already committed—the violation of his contract right to a certain priority position. Equitable relief should not be denied for one wrong on the ground that plaintiff has an adequate remedy at law for another and distinct wrong. For the precise wrong in question—the deprivation of his rightful priority position—plaintiff has no adequate remedy at law. The damages for the lessened security of plaintiff's future position, as well as for the possible consequences of the breach of contract committed, are not ascertainable. It is a ground for equitable relief in the nature of a decree of specific performance that there is no basis on which damages can be estimated. *St. Regis Paper Co.* v. *Santa Clara Lumber Co.*, 173 N. Y. 149, 65 N. E. 967. I think plaintiff is entitled to the relief demanded."

Granted that in certain matters pertaining to the management of a labor organization, courts will not interfere,

however, as here, where the jurisdiction of the Board of Appeals to finally determine a controversy submitted it has been established, fixed and acquiesced in, courts of Indiana should interfere to protect petitioners against the threatened invasion of their rights.

The rule is fully stated in 7 C. J. S., pages 79 to 82, section 34:

> "The courts will not interfere with the internal affairs of an unincorporated association so as to settle disputes between the members, or questions of policy, discipline, or internal government, so long as the government of the society is fairly and honestly administered in conformity with its laws and the law of the land, and no property or civil rights are invaded, and, under such circumstances, the decision of the governing body or established private tribunal of the association is binding and conclusive and not subject to review or collateral attack in the courts. * * * Nevertheless, the courts have and will exercise power to interfere in the internal affairs of an association where law and justice so require, and the proceedings of the association are subject to judicial review where there is fraud, oppression, or bad faith, or property or civil rights are invaded, *or the proceedings in question are violative of the laws of the society*, or the law of the land, or *ultra vires, or are otherwise illegal.*
>
> "In this connection it has been pointed out that the rule that the courts will not interfere with the internal affairs of a voluntary association *does not relieve such association from application of the general law of contracts, and, while the courts will not overrule the decision of an association's tribunal merely because of a difference of opinion as to the merits, they will review the action taken sufficiently to ascertain whether such tribunal followed the procedural terms of the agreement and correctly construed and applied the substantive terms thereof.* * * * Even in cases otherwise warranting judicial interference the

courts will not, as a rule, take jurisdiction unless the complaining member has exhausted such remedies as may be provided by the laws of the association itself. However, the rule requiring a member to exhaust his remedies within the organization before applying to a court of equity for relief is subject to the qualification that the act or acts complained of must have been *in accord with the association's regulations, and where the proceeding is irregular and the association acted without jurisdiction,* the member aggrieved thereby may seek judicial redress by a direct appeal to the courts in the first instance."

Another leading case is the case of *Polin* v. *Kaplan,* (N. Y. Court of Appeals) 177 N. E. 833:

"The constitution and by-laws of an unincorporated association express the terms of a contract which define the privileges secured and duties assumed by those who have become members. As the contract may prescribe and precise terms upon which a membership may be gained, so may it conclusively define the conditions which will entail its loss. Thus, if the contract reasonably provides that the performance of certain acts will constitute a sufficient cause for the expulsion of a member, and that charges of their performance, with notice to the member, shall be tried before a tribunal set up by the association, the provision is exclusive, and the judgment of the tribunal, rendered after a fair trial, that the member has committed the offenses charged and must be expelled, will not be reviewed by the regularly constituted courts. * * * This is not to say, however, that a court will decline to interfere, if an expulsion has been decreed for acts not constituting violations of the constitution and by-laws, and not made expellable offenses thereby, either by terms expressed or implied. In such an instance, the expulsion is not within the power conferred by the contract. Accordingly, the proceedings will be set aside and the associate restored to membership."

Another New York case is that of *Yockel* v. *German-American Bund*, 20 N. Y. S. 2nd, 774:

> "In any event, nothing contained in the Bund constitution warrants the summary action taken upon the stated ground and in the circumstances here disclosed. While the court will not review the merits of an expulsion after a fair and proper trial, it will not 'decline to interfere, if an expulsion has been decreed for acts not constituting violations of the constitution and by-laws, and not made expellable offenses thereby, either by terms expressed or implied. In such an instance, the expulsion is not within the power conferred by the contract.' * * * Where irregularities in procedure and non-compliance with by-laws and constitution are alleged, immediate recourse may be had to the courts. * * * The member is not called upon 'to abide by any rule or regulation which is unfair, unreasonable, and arbitrary, and which would tend to deprive him of rights guaranteed him by the constitution.' "

In Volume 4, American Jurisprudence, at page 466, sections 17 and 18, is found the following:

> "* * * A court of equity may enjoin any act of an association toward one of its members which is unauthorized and unlawful, if he has not otherwise any remedy adequate for the protection of his rights."

This same work in Volume 31 thereof, at page 864, section 66, contains the following further statement:

> "* * * However, an injured member may seek redress in court when the rights and privileges guaranteed to him by the constitution and by-laws have been disregarded."

In Volume 63 of Corpus Juris, at page 701, section 82, the following appears in the text:

> "Tribunals may be set up by a union for the determination of controversies between members or locals.

> * * * The existence of a tribunal properly erected and charged with the duty of determining the rights of members of the unions as between themselves and their organization precludes the interference by the courts as to matters so confided. * * * This rule however, does not relieve the union from the application of the general law of contracts, and the court may interfere to safeguard any of the rights and privileges guaranteed to a member by the constitution and laws of his union."

Sustaining this same proposition is the case of *Abdon* v. *Wallace*, 95 Ind. App. 604; 165 N. E. 68 (Petition to transfer to the Indiana Supreme Court denied).

Petitioners not only have the right to invoke the injunctive powers of the court to protect their seniority rights and contractual rights under the constitution of the Brotherhood of Railroad Trainmen, but they are also entitled to seek injunctive relief to prevent the unauthorized and unfair and *ultra vires* action upon the part of the Cleveland convention.

In the case of *Robinson* v. *Dahm*, 159 N. Y. S. 1053, cited above, the court made this further observation:

> "While, therefore, the courts will not overrule the decision of association tribunals merely because of a difference of opinion as to the merits, they will review the action taken sufficiently to ascertain whether the tribunals (a) followed the procedural terms of the agreement and (b) correctly construed and applied the substantive terms of the agreement."

**Point E.**

It must be borne in mind that the Supreme Court of Indiana did not pass upon the merits of the controversy between the petitioners and respondents. Said court nei-

ther sustained the position of the petitioners or that of the respondents. In effect, said court declined to decide this cause of action, assigning as its reason that a court will not interfere with the internal affairs of a union.

The opinion and judgment of the Supreme Court of Indiana denies to the petitioners due process of law. By this opinion the law of this case is established. No other relief is available to the petitioners. More important however, is the far-reaching effect of the erroneous rule laid down by the Supreme Court of Indiana. If this rule is permitted to prevail, the individual member of a labor union is just the pawn of the organization. He is subject to any restriction, any regulation that some officer of the central organization might seek to impose upon him, however unjust. The union itself is beyond the reach of the courts. No governmental agency enjoys such immunity. Membership of the individual means the surrender of every right of a free man. The result of this decision is to make dictators out of many power grasping union officials. Democratic processes within unions are abolished. The individual, the man who pays part of his wages as dues to support the union, surely he is entitled to some protection. He is entitled to the protection of the courts. Fortunately, such a rule cannot be justified. Courts do, and should have the right to interfere in the internal affairs of a union to protect an individual or group of members from arbitrary or illegal interference with the individual's rights.

Here, in an orderly process, these parties had followed a fixed course of procedure by which they arbitrated their controversy. They had carried this process of arbitration to the Board of Appeals of the Brotherhood of Railroad Trainmen. This commendable practice should receive the

approval and sanction of the courts. The petitioners should be entitled to receive the full benefits of the decision of that tribunal arbitrating this original controversy.

The petitioners respectfully urge that the Supreme Court of the United States upon examination of their petition and brief herein will grant the prayer of their petition for writ of certiorari, and that a writ of certiorari may issue out of and under the seal of this Court, directed to the Supreme Court of the State of Indiana, to the end that the judgment of the Supreme Court of Indiana may be reviewed and reversed by this honorable Court.

Respectfully submitted,

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by said Railroad Company in the Same Capacity as the Named Parties,
*Petitioners,*

By THEODORE LOCKYEAR,
ELMER Q. LOCKYEAR,
CHARLES J. EICHEL,
*Attorneys for Petitioners.*

Dated at Evansville, Indiana,
June 15th, 1942.